

REMARKS

Claims 18, 19 and 28-77 are pending and rejected in the Office Action. The Applicants have amended claims 28, 30-34 and 36-37 and canceled claims 29, 35 and 44-77 without prejudice. No new matter has been added. Furthermore, a terminal disclaimer is submitted herewith. Applicants respectfully submit that claims 18, 19, 28, 30-34 and 36-43 are now in condition for allowance.

Claim Rejections-Double Patenting

Claims 18, 19, 50, 51, 55-58 and 62 stand rejected under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over claim 8 of *Schmiel* (US 6,626,905) in view of *Michelson* (U.S. 5,772,661). The Applicants have canceled claims 50, 51, 55-58 and 62, rendering the rejection of these claims moot. With respect to the remaining claims, a terminal disclaimer is submitted herewith to obviate the double patenting rejection. For at least this reason, the Applicants respectfully request the withdrawal of this obvious-type double patenting rejection of claims 18 and 19.

Claims Rejections-Prior Art

Claims 28-33, 35, 36 and 67-77 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Michelson*. The Applicants canceled claims 35 and 67-77, rendering the rejection of those claims moot. Regarding claims 28-33, the Applicants have amended claim 28 to depend on claim 19 and claims 30-33 to depend on claim 28. As indicated in the Office Action, claim 19 should be allowable with the terminal disclaimer submitted herewith. For at least this reason, the Applicants respectfully request the withdrawal of this 102(b) rejection of claim 28 and the associated dependent claims 30-33.

Claims 33, 34 and 36 stand rejected under 35 U.S.C. § 103(a) as being obvious over *Michelson*. Claim 33 has been amended to depend on claim 19 and thus allowable for at least the same reason as set forth above. In addition, claim 36 was amended to require "an adjustable stop operatively connected to the tube to affirmatively stop instruments passed through said instrument guide." The support for this amendment is present at, for example, paragraph 66 of the application as published (the first full paragraph of page 15 in the

application as submitted). In contrast, Michelson does not teach, disclose or suggest an adjustable stop for use with the instrument guide. Moreover, there is no motivation to modify *Michelson* to include "an adjustable stop." *Michelson*, rather, teaches away from such a limitation by stating that "since the extended outer sleeve 140 *is of a fixed length and rigid*, the flat rearward surface 172 of the distal end 146 may be used as a stop to the advancement of any instruments placed through the extended outer sleeve 140." *Michelson*, col. 13 at lines 50-54.

For at least this reason the Applicants respectfully request the withdrawal of this § 103(a) rejection of claim 33.

Regarding claim 34, the Applicants respectfully traverse the rejection. Claim 34, which has now been amended to independent form to include all elements of the previously presented claim 28, includes a feature of an "an adjustable stop operatively connected to the tube." *Michelson* fails to teach, disclose or suggest this feature. As described above, there is no motivation to modify *Michelson* to include "an adjustable stop." *Michelson*, rather, teaches away from such a limitation by stating that "since the extended outer sleeve 140 *is of a fixed length and rigid*, the flat rearward surface 172 of the distal end 146 may be used as a stop to the advancement of any instruments placed through the extended outer sleeve 140." *Michelson*, col. 13 at lines 50-54. The other art cited by the Examiner likewise fails to teach, disclose or suggest this feature. For at least this reason, the Applicants respectfully request the withdrawal of this § 103(a) rejection of claim 34.

Claims 37-41 stand rejected under 35 U.S.C. § 103(a) as being obvious over *Michelson* in view of *Mehdizadeh* (U.S. 6,030,390). Claims 42-66 stand rejected under 35 U.S.C. § 103(a) as being obvious over *Michelson* in view of *Mehdizadeh* and further in view of *Bryan* (U.S. 5,306,275). Applicants have canceled claims 44-66, without prejudice, thereby rendering the rejection of these claims moot. In addition, Applicants have amended independent claim 37 to require "an adjustable stop operatively connected to the tube to affirmatively stop instruments passed through said instrument guide." Again, as described above, there is no motivation to modify *Michelson* to include "an adjustable stop."

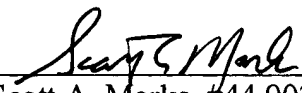
Michelson, rather, teaches away from such a limitation by stating that “since the extended outer sleeve 140 *is of a fixed length and rigid*, the flat rearward surface 172 of the distal end 146 may be used as a stop to the advancement of any instruments placed through the extended outer sleeve 140.” *Michelson*, col. 13 at lines 50-54. In addition, none of the prior art cited by the Examiner, individually or in combination, teaches, suggests or discloses an “adjustable stop.”

Claims 38-43 each depend directly or indirectly on claim 37. Applicants therefore request withdrawal of the § 103(a) rejection of claims 37-43.

The Applicant herewith petitions the Commissioner to extend the time for reply to the Office Action dated June 6, 2005 for two (2) months, from September 6, 2005, to November 6, 2005. A credit card payment form in the amount of \$710.00 (\$450.00 for a two-month extension of time and \$260.00 for the terminal disclaimers) is submitted herewith. No additional fee is believed to be necessary for the entry of this paper. Should any additional fee be required for the entry of this paper, the Commissioner is authorized to charge the Faegre & Benson Deposit Account No. 06-0029 and in such event, is requested to notify us of the same.

For all of the above reasons, the Applicants request reconsideration and allowance of the claimed invention. The Examiner is invited to contact the undersigned attorney if an interview would expedite prosecution.

Respectfully Submitted,

By: 

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